

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

UNITED STATES OF AMERICA

V.

ANGEL OCASIO

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Cause No. EP-11-CR-2728-KC

TLO, LLC's RESPONSE TO DEFENDANT'S MOTION TO COMPEL
TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

COMES NOW Third-Party TLO, LLC (hereinafter “TLO”), by and through its undersigned counsel Christopher A. Antcliff, and files this, its Response to Defendant Angel Ocasio’s (“Defendant”) Motion to Compel and respectfully shows the Court as follows:

As noted in TLO's Motion for Extension of Time, the undersigned was retained by TLO late in the afternoon of May 29, 2013. That evening, the undersigned reviewed the documents filed by counsel for the Government and Counsel for Defendant relative to the subpoenas that had been issued in the case. Because of the undersigned's schedule, TLO was unable to respond to the Subpoenas until Thursday, May 30, 2013 at 4:31 p.m. (less than 24 hours after the undersigned was retained) at which time the undersigned hand-filed third-party TLO's Motion to Quash Subpoenas Issued Pursuant to Federal Rule of Criminal Procedure 17. Shortly thereafter, according to the Office of the District Clerk, at approximately 5:20 p.m. Defendant filed his Motion to Compel Production of Materials and Information Demanded by Subpoena.¹

¹ Until approximately 12:00 noon on June 3, 2013, the undersigned was unable to participate in the CM/ECF System to file and could not receive any electronically filed documents related to this case for the reason that the system apparently had no provision to permit a third-party filer in a criminal case. As a

Defendant's assertion that TLO somehow elected to ignore any subpoena is inaccurate. When TLO became aware of the subpoenas issued by Defendant, TLO began a search for local counsel in El Paso, Texas who could assist them in representing TLO's interests in this matter. *See* Affidavit of Derek A. Dubner attached hereto as Exhibit A. Ultimately, because the Government elected to file a motion to quash the subpoenas on behalf of TLO, TLO abandoned its search for local counsel. *Id.*

On May 28, 2013 this Court issued an Order denying the Government's Motion to Quash finding, *inter alia*, that the Government lacked standing to assert interests on behalf of TLO. *Id.*

The following day TLO retained the undersigned local counsel to advocate its interests in this matter, and the very next day, on May 30, 2013 TLO's local counsel filed a Motion to Quash Subpoenas on behalf of TLO. *Id.* Any claim that TLO has ignored the subpoenas or failed to take any action to assert its interests in this matter is completely and wholly inaccurate. *Id.* TLO has, at all times since becoming aware of the subpoenas, acted to protect its interests in this matter. *Id.*

TLO understands that counsel for Defendant did not see TLO's Motion to Quash Subpoenas filed on May 30, 2013 until sometime on May 31, 2013 and, as a result, was unaware that TLO had filed its own Motion to Quash when Defendant filed his Motion to Compel. However, Defendant knew, or should have known that his subpoena was deficient when it was delivered by certified mail, return receipt requested, particularly in

result, the undersigned was obligated to hand-file TLO's Motion to Quash. Apparently, when a document is hand-filed, there is a time lag between the time of the filing and the time that the District Clerk scans the document and enters it into the system. TLO's Motion to Quash was not entered into the CM/ECF System until some point during the morning of May 31, 2013 and it was docketed as document number 141. This scan and entry operation by the District Clerk took place after Defendant electronically filed his Motion to Compel at approximately 5:20 p.m. on May 30, 2013. Defendant's Motion to Compel was assigned document number 140 on the CM/ECF Docket for this action.

light of his attempts to correct the deficiencies in the subpoenas. Indeed, TLO was only properly served yesterday, on June 3, 2013 with a subpoena dated May 29, 2013. *Id.*, *see also* Subpoena to Testify at a Hearing or Trial in a Criminal Case attached hereto as Exhibit B.

On May 20, 2013 this Court ordered Defendant to notify the Court “when Mr. Ocasio serves TLO with a Rule 17 subpoena.” *See* CM/ECF Document Number 132 entitled “Order”. Such language is indicative of the fact that as of May 20, 2013 Defendant had not informed the Court that he had served or attempted to serve a subpoena on TLO. The Court went on to inform the parties that “[i]f the government wishes to move to quash this subpoena, it shall have forty-eight hours to file such a motion.” *Id.* The Government filed its Motion to Quash in accordance with the Court’s Order on May 23, 2013. *See* CM/ECF Document Number 137. Prior to the Court’s Order setting a forty-eight hour deadline, there was no specific date or time set for compliance with the deficient subpoenas. *See* Affidavit of Derek A. Dubner attached hereto as Exhibit A.

In light of the foregoing, third-party TLO, LLC respectfully requests that the Court deny Defendant’s Motion to Compel.

Respectfully submitted,

_____/s/_____,

Christopher A. Antcliff

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record in this cause.

_____/s/____.

Chris Antcliff

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Conclusion

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ORDER ON DEFENDANT'S MOTION TO COMPEL

On this day, the Court considered the Motion to Compel filed by Defendant Angel Ocasio, and the response thereto filed by third-party TLO, LLC in the above-captioned cause. After due consideration, the Court is of the opinion that the Motion should be denied.

Accordingly, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Angel Ocasio's Motion to Compel is **DENIED**.

SIGNED this _____ day of _____, 2013.

THE HONORABLE KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE